

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

-against-

BALLET THEATRE FOUNDATION, INC., a/k/a  
American Ballet Theatre, American Ballet  
Theatre Company, and ABT,

Defendant.

Index No. 07 CIV 8598 (SHS)

**ANSWER**

Defendant, Ballet Theatre Foundation, Inc., by its attorneys, Kauff  
McClain & McGuire LLP, as and for its Answer to the Complaint, respectfully alleges:

1. Defendant asserts that the allegations contained in the paragraph entitled "Nature of the Action" are legal conclusions to which no responsive pleading is required. To the extent such paragraph is deemed to contain factual allegations, Defendant denies those allegations.

2. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint.

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Complaint, except denies that it committed any unlawful employment practices.

4. Defendant admits the allegations contained in paragraph 3 of the Complaint, except denies that the Equal Employment Opportunity Commission is authorized to bring this action.

5. Defendant admits the allegations contained in paragraph 4 of the Complaint.

6. Defendant admits the allegations contained in paragraph 5 of the Complaint.

7. Defendant admits the allegations contained in paragraph 6 of the Complaint.

8. Defendant admits the allegations contained in paragraph 7 of the Complaint.

9. Defendant denies the allegations contained in paragraph 8 of the Complaint.

10. Defendant denies the allegations contained in paragraph 9 of the Complaint.

11. Defendant denies the allegations contained in paragraph 9(a) of the Complaint, except admits that Henry Nowak played trumpet from time to time in Defendant's orchestra over a number of years.

12. Defendant denies the allegations contained in paragraph 9(b) of the Complaint, except admits that Henry Nowak played trumpet in more performances in 2004 than in 2003 and in more performances in 2005 than in 2004.

13. Defendant denies the allegations contained in paragraph 9(c) of the Complaint.

14. Defendant denies the allegations contained in paragraph 9(d) of the Complaint.

15. Defendant denies the allegations contained in paragraph 9(e) of the Complaint.

16. Defendant denies the allegations contained in paragraph 10 of the Complaint.

17. Defendant denies the allegations contained in paragraph 11 of the Complaint.

18. Defendant denies that Plaintiff is entitled to any of the relief set forth in the paragraphs of the Complaint entitled Prayer for Relief.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE:**

19. The Complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE:**

20. The Complaint is barred by principles of laches and estoppel.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE:**

21. The Complaint is barred by reason of Plaintiff's failure to fulfill the mandatory prerequisites to suit under Section 7(b) of the Age Discrimination in Employment Act, 29 U.S.C. § 626(b).

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE:**

28. The Complaint is barred insofar as it relies on facts that are not alleged in an administrative charge of discrimination.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE:**

31. Upon information and belief, Charging Party has failed to mitigate his alleged damages.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE:**

35. All actions taken by Defendant with regard to Charging Party's employment were taken for legitimate, nondiscriminatory reasons.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE:**

36. The employment decisions at issue were made in good faith.

**AS AND FOR AN EIGHTH  
AFFIRMATIVE DEFENSE:**

37. The Complaint or any relief sought by Plaintiff is barred, in whole or in part, by such additional defenses as Defendant may have that cannot now be articulated

due to the fact that discovery has not been completed. Accordingly, Defendant reserves the right to supplement the foregoing and to raise additional defenses as may appear as the case progresses.

**WHEREFORE**, Defendant Ballet Theatre Foundation, Inc. respectfully requests that the complaint be dismissed with prejudice and that Defendant be awarded its costs, including reasonable attorney's fees.

Dated: New York, New York  
November 30, 2007

KAUFF McCLAIN & McGUIRE LLP

By: 

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Attorneys for Defendant  
BALLET THEATRE FOUNDATION, INC.